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IN THE

Supreme Court of the United States

CITY OF WINTER HAVEN, et al,

Petitioners,

vs.

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART,

Respondents.

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF

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PETITION FOR WRIT OF CERTIORARI

This Petition for Certiorari to review the decision of the Circuit Court of Appeals dated March 10, 1944, 141 Fed. (2d) 348, is necessary because the Circuit Court of Appeals for the Fifth Circuit (a) did not adjudicate the questions of state law involved as directed by this Court in *Meredith* vs. *Winter Haven*, No. 42, October Term 1943; (b) held that it "found no settled constitutional law of Florida" which would determine the rights of the parties; and (c) decided the case in a way contrary to that in which the Florida Court has decided other cases involving the same question of law.

The Order of the lower court dismissing the Bill of Complaint was made by a Florida Federal Judge, who had formerly been a Circuit Judge of the State of Florida. All of the Judges of the Circuit Court of Appeals who participated in the decision are from states other than Florida.

STATEMENT OF THE CASE

Since the brief which we filed in this Court on the former hearing contained a complete statement of the facts, we shall not attempt to restate all of the facts, but only those which

are essential to show that the reasons given for this Petition are well founded.

In 1933, the City of Winter Haven issued two series of bonds called "General Refunding Bonds of 1933", Series A and Series B, totaling over $2,000,000. Series A was issued to refund bonds which bore interest at 6 percent; Series B to refund bonds which bore 5½ percent. Both series of bonds of 1933 bore interest at 3½ percent from date of issue to April 1, 1935, 4 percent from 1935 to 1936, 4½ percent from 1936 to 1937, and 5 percent from 1937 to 1943. Thereafter, Series A bears interest at 6 percent, and Series B at 5½ percent. To each bond there was attached what are called "deferred interest coupons". On Series A, these coupons are for the face value of $145. and on Series B, $95. According to their express terms, they are payable on the respective maturities of the bonds, and no bonds mature before April 1, 1948. The bonds of both issues contain a provision which authorizes the City to call them for payment before maturity; on any interest payment date on or prior to April 1, 1943 at par plus accrued interest, plus one-half of the "deferred interest coupon", and on any interest payment date from April 1, 1943 to April 1, 1953 at par plus accrued interest, plus three-fourths of the "deferred interest coupon". In 1940, the City undertook to issue new refunding bonds bearing interest at 4, 4¼ and 4½ percent, and to sell them for the purpose of calling the outstanding bonds. The new refunding bonds were validated and the old bonds were called for redemption on October 1, 1941, at par plus accrued interest at the current rate, making no provision for payment of any portion of the "deferred interest coupon", because of the decisions of the Supreme Court of Florida in *Andrews* vs. *Winter Haven*, 148 Fla. 144, 3 So. (2d) 805, and other cases, reference to which is hereafter made.

Plaintiffs instituted this action in the Federal Court under Title 28, Sec. 400, U. S. C. A., which authorizes federal

courts to enter judgments declaring the law applicable to an existing controversy between parties. The controversy which the plaintiff sought to have settled was the right of the City to call the bonds before April 1, 1943 without making available funds for the payment of one-half of the deferred interest coupon in addition to the accrued interest, and in the alternative, whether, if the obligation to pay a part of the "deferred interest coupon" as a condition to redemption was not enforcible, plaintiffs were entitled to collect from the City interest from the date of the bonds to the date of call at the rate borne by the bonds surrendered, less the amount of interest paid by the City to the plaintiffs on their present bonds.

An Amended Bill was filed, which prayed that the Court should determine whether a tender by the City of payment at par plus accrued interest without tendering a proportionate part of the deferred interest coupon would "toll the running of interest on the Refunding Bonds of 1933", and whether the holders of those bonds were required to accept such tender without receiving a part of the deferred interest coupon, and whether in the event the deferred interest coupons were held invalid, such invalidity also invalidated the call provision in the refunding contract.

A comparison of these prayers of the Complaint and Amended Complaint with the opinion of the Court of Appeals shows that none of these issues was decided.

GROUNDS FOR PETITION FOR THE WRIT

Application is hereby made to this Court for a Writ of Certiorari to review the decision of the Circuit Court of Appeals for the Fifth Circuit dated March 10, 1944, reversing the decree of the District Court for the Southern District of Florida dismissing the Complaint, on the following grounds:

I.

The decision of the Circuit Court of Appeals for the Fifth Circuit dated March 10, 1944, did not adjudicate the question of law which the Complaint prayed that the Court determine, namely, whether the call for redemption of the bonds was valid under the law of Florida.

A. The only statements in the opinion of the Circuit Court of Appeals which can be considered as deciding any point involved in the case are

1. That aside from the *Andrews* case, it

"found no settled constitutional law established in Florida which would condemn these bonds as refunding bonds, or which would invalidate the postponement of payment of part of the old interest rate by the plan of deferred coupon".

2. That

"payment of part of the deferred interest being plainly a consideration for the bondholders agreeing to the call provision, *we do not see how* the one can be severed from the other, so as to sustain the call before maturity without paying part of the deferred interest".

3. That the Court was

"not sure the *Andrews* case required it to hold otherwise."

or that the *Andrews* case

"controlled this case".

4. "But if it (the *Andrews* case) does"

and

"if the *Andrews* case requires us to hold that the part of the call provision which requires one-half of the deferred interest to be paid is severable and unenforcible",

plaintiffs under Sec. 20 of the Resolution

"are entitled to assume the position of holders of a like amount of indebtedness provided to be refunded",

and that plaintiffs have a claim against the City for the amount that would have been otherwise recoverable under the call provision.

Since the quoted portions of the opinion show that the Court did not determine or decide whether the *Andrews* case controlled the decision of this case or not, and since the Court said that it had "found no settled constitutional law" in other cases which should control, it did not decide the question of law which the Complaint was brought to decide, and which this Court ordered it to decide according to the law of Florida, that is, whether the call for redemption on October 1, 1941, without making provision for payment of any portion of the deferred interest coupon, tolled the interest after the call date, and whether the call was made in accordance with applicable law.

The District Judge will not be able to determine from the opinion whether, as the Complaint seeks to ascertain, the City should pay interest on the called bonds since the date of call or not, and this must be decided before a Declaratory Judgment can be entered determining the rights of the plaintiff under the Complaint. This was the prime purpose of the Complaint, and is the question of state law which this Court said should be decided.

B. The opinion as a whole may be construed as implying that the Court "did not see" why it should hold otherwise than it did, regardless of whether the *Andrews* case was controlling or not, because it apparently assumed that the amount of money to be paid by the City under the concluding paragraph of the opinion was the same, but it failed to consider the fact that the decision of the validity of the call was essential to the determination of all rights of the parties.

II.

Because the Court "found no settled constitutional law of Florida" that would permit the City to call the bonds on or before April 1, 1943 without paying any portion of the deferred interest coupons. This holding of the Court rests solely upon its assumption that the cases to which it refers can be distinguished from the present case, but it did not seem to realize that in all of the cases referred to, the Florida Supreme Court held that the political subdivision debtors could call their bonds for redemption before maturity without being legally required to pay any portion of the deferred interest coupon, and that this is a rule of law of the State of Florida, established by those cases. The effect of the decision of the Circuit Court of Appeals is that the City of Winter Haven must pay a portion of its deferred coupons, even though the debtors whose cases were decided by the Florida Court were not required to pay any portion of the deferred interest coupons on their bonds.

The *Andrews* case alone is sufficient to control the decision of this case, because it involved bonds of the same issue as those of the plaintiff, and the Circuit Court of Appeals admits that the decision of the Florida Supreme Court "must be taken as deliberate". The opinion of the Florida Court in the *Andrews* case expressly rests decision upon the law which it had previously announced in *Outman* vs. *Cone*, 141 Fla. 196, 192 So. 611; *Taylor* vs. *Williams*, 142 Fla. 402, 195 So. 175, and *State* vs. *Spec. Tax School District No. 3*, 143 Fla. 557, 197 So. 127. Since the *Andrews* case was decided, the Supreme Court of Florida has again followed and applied the same rule to the bonds of the City of New Smyrna, where the provisions for call were identical with those contained in the bonds of the City of Winter Haven.

This Court in its previous opinion said that the ruling in the *Andrews* case must

> "be taken as controlling, unless it can be said with some assurance that the Florida Supreme Court will not follow it in the future"

and since the Florida Court has followed the *Andrews* case in the *New Smyrna Beach* case, where the provisions for call of the bonds are identical, there can be no assurance that the Florida Court would follow a different rule in the future.

In its decision in *Huddleston* vs. *Dwyer*, No. 628, decided May 15, 1944, this Court said that it was the duty of the Circuit Court of Appeals

> "as well as of the trial court, to ascertain and apply the state law where, as in this case, it controlled the decision," citing *Meredith* vs. *Winter Haven*, 320 U. S. 228.

The Circuit Court of Appeals should not have sought to avoid the effect of the decisions of the State Court by making distinctions, since under the rule, it should have rendered a decision in which the result to the City would be the same that it would have been had this case been tried in the State Courts of Florida.

III.

Because the decision of the Circuit Court of Appeals is contrary to the law of Florida as announced by the Supreme Court of that state in the cases of *Outman* vs. *Cone*, supra, *Taylor* vs. *Williams*, supra, *State* vs. *Spec. Tax School District*, supra, and *State* vs. *City of New Smyrna Beach*, 148 Fla. 482, 4 So. (2d) 660, in all of which the issuing subdivisions were expressly held to have the right to call their bonds for payment without paying any portion of the deferred interest coupon, and is also contrary to the decision of the Florida Supreme Court in *Andrews* vs. *Winter*

Haven, supra, holding that the City of Winter Haven had the right to call its bonds without the payment of any portion of the deferred interest coupons.

WHEREFORE your Petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals, commanding that Court to certify and to send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket "No. 10402, W. J. Meredith, James G. Martin and A. R. Ohmart, Appellants, vs. City of Winter Haven, et al., Appellees", and that the said decree of the Circuit Court of Appeals may be reversed by this Honorable Court, and that Petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

CITY OF WINTER HAVEN, et al,

By.....
GILES J. PATTERSON,

.....
HARRY E. KING,
Counsel for Petitioners.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

By its decision dated October 22, 1943, this Court reversed the decision of the Circuit Court of Appeals for the Fifth Circuit, 134 Fed. (2d) 202, because that Court had not ruled upon the question of Florida law presented by prayer of the Complaint for a declaration as to the right of the City to call its bonds for redemption without providing for the payment of any portion of the deferred interest coupons. In its former opinion, this Court said that since the decision of the case

> "is concerned solely with the extent of the liability of the City on its refunding bonds"

it was the duty of a Federal Court in this action, where the jurisdiction of the Court had been properly invoked by the plaintiff,

> "to decide questions of state law whenever necessary to the rendition of a judgment".

It remanded the case to the Circuit Court of Appeals

> "for further proceedings in conformity with this opinion".

But the opinion of the Circuit Court of Appeals is not in conformity with the duty imposed upon it, since it does not declare the law of Florida. In fact, the Circuit Court of Appeals said that

> "aside from the *Andrews* case, we find no settled constitutional law established in Florida".

As to the *Andrews* case, 148 Fla. 144, 3 So. (2d) 805, it said that it was

> "not sure that the *Andrews* case requires us to hold otherwise"

even though it admitted that the decision of the Florida Supreme Court

> "must be taken as deliberate".

Again, it said

> "We are not satisfied that the *Andrews* case controls this one. But if it does, it does not cover the second question" etc. (the alternative prayer of the Complaint).

The statement of the Court, that it could

> "find no settled constitutional law established in Florida"

aside from the *Andrews* case, was due to the fact that it attempted to distinguish decisions of the Supreme Court of Florida from the case in hand. *Outman* vs. *Cone*, 141 Fla. 196, 192 So. 611, was held not to be controlling for the reasons given in the opinion, but the Court overlooked the determining factor in that case, which was that the Florida Court said that the provisions for the payment of the deferred interest coupon in the event of call were illegal, because they left

> "ground to jockey the bond situation",

and because the amount of the deferred interest would have to be

> "posted in favor of the holder of the old bonds"

if they had been called in the manner provided. If the bonds of Winter Haven had been called during the first three years, the portion of the deferred interest which the City under the call provision would have been required to post would, when added to the interest paid, have exceeded the rate of interest that would have accrued on the original bonds. The effect of this was to jockey the bond situation, which would have compelled it to post the premium in favor of the bondholders at the time of call.

We are unable to agree with the Court's summary of *Taylor* vs. *Williams*, 142 Fla. 402, 195 So. 175, that the

provision touching the new security was enjoined because it was held severable. The Order of the Court in that case was that the Bill of Complaint should not have been dismissed. There was no injunction issued. In its opinion, 142 Fla. 402, 195 So. 175, the Court said

> "The provision for deferred interest coupons is not authorized by law and should be eliminated".

On rehearing, the Florida Court wrote a second opinion, in which it said that in its former opinion it had held

> "that the 1935 refunding contract, resolution and bonds, and the 1939 refunding contract and resolution contained illegal provisions that should be eliminated, viz: provision as to deferred interest coupons on refunding bonds".

It concluded that

> "The refunding resolutions and contracts are not in accord with law and the Bill of Complaint should not have been dismissed".

The Circuit Court of Appeals, in its Order on the Petition for Rehearing, also sought to distinguish the case of *State* vs. *Special Tax School Dist. No. 3*, 143 Fla. 557, 197 So. 127, on the ground that the Florida Court had held the deferred interest coupon "originally and totally void", and that no part of the deferred interest was payable on the call as provided in the bonds of Winter Haven. Apparently, the Court did not realize that under the terms of those bonds, the District was required to pay the entire amount of the deferred interest coupon in the event the bonds were called for refunding.

The statement in the opinion of the Circuit Court of Appeals, that in *State* vs. *City of New Smyrna Beach*, 148 Fla. 482, 4 So. (2d) 660,

> "It seems that the decree validating bonds which carry deferred interest coupons was affirmed"

shows a misunderstanding of that case. The validating decree which was affirmed, was the decree validating the *new bonds* which were being issued. The new bonds did not carry deferred interest coupons. The deferred interest coupons which were involved were attached to the bonds which were being called for payment.

We attach to this brief in Appendix A statements quoted from the brief of the State of Florida, and in Appendix B, statements from the brief of the City, which briefs were filed in the above case, and call attention to the summary of the provisions of the bonds for call, and to the citation of *State* vs. *Sarasota*, 118 Fla. 629, 159 So. 797.

It is difficult to understand how the Court of Appeals could have held that the decision of the Florida Court in the *Andrews* case

> "must be taken as deliberate"

and at the same time say that it was not sure that it was controlling. The Florida Court expressly said

> "In answer to question 1, on authority of *Outman* vs. *Cone*, 141 Fla. 196, 192 So. 611, and *Taylor* vs. *Williams*, 142 Fla. 402, 195 So. 175 and 184, we are impelled to hold the deferred interest coupons void and non-enforcible, but that they may be severed from other provisions of the refunding bonds which may then be called under the terms of the contract".

Since this was the first question raised on appeal, and the Court's statement was a decision of that question, it was the decision of the Florida Court on the question of law presented, and should control the decision of the Federal Court in this case.

In substance, the decision of the Court of Appeals rests upon its own idea of what is just and equitable. The Court was in error when it stated that it only knew of the refund-

ing agency contract through the *Andrews* case. That contract is a part of Exhibit E, which is attached to the Plaintiffs' own Amended Bill of Complaint. While it is a separate document, the Resolution recites the making of the contract, and by Sec. 17, orders the bonds when issued to be placed in escrow and delivered

"pursuant to and as contemplated by the contract".

The Fifth Circuit Court of Appeals has itself held such a contract contrary to the public policy of the State of Florida. *Bradford County* vs. *Nuveen*, 133 Fed. (2d) 169, and denied recovery on it.

Even if, as the Court says, the invalidity of the contract ought not to affect the bonds, Sec. 20 of the Resolution should not be held to create a separate equitable right merely because provision for call on the bonds is unenforcible. The holding, that the contract should be kept separate from the Resolution, is directly contrary to the decisions of this Court in *McMullen* vs. *Hoffman*, 174 U. S. 639, 43 L. ed. 1117, and *Hall* vs. *Coppell*, 7 Wall. 542. To give to Plaintiffs an equitable cause of action upon a resolution intended to make effective a contract which is contrary to the public policy of the State, because the provisions of the bonds are unenforcible, violates the principles of equity and justice, since it permits Plaintiffs to indirectly recover the money which they cannot recover at law, notwithstanding their participation in a violation of the public policy of the state.

Respectfully submitted,

.....

GILES J. PATTERSON,

.....

HARRY E. KING,

Counsel for Petitioners.

APPENDIX A

"After having enjoyed the benefit of the reduced interest rates for more than seven years, the City now asserts that the deferred interest coupons, and the provisions for their payment, either in whole or in part, are invalid, and that it is not obligated to pay any part of the deferred interest. This position should not be sustained. The contract was undoubtedly made in good faith, and the parties to it must have thought it was wise and beneficial, otherwise it would not have been entered into. Its legal effect was merely to provide that instead of paying 6% interest each year, the City should pay the lesser rates from January 1, 1934 to January 1, 1944, and that the difference should be paid at the maturity of the bonds now outstanding, unless the latter should be called for redemption on or before January 1, 1944, in which event only one-half of the difference should be paid, or should they be called for redemption after that day, but on or before January 1, 1954, only three-fourths of the difference should be paid.

The State is not aware of any constitutional provision or statute which prohibited the making of that contract. To the contrary, the case of *State* vs. *Sarasota County*, 118 Fla. 629, 159 So. 797, indicates that the contract is valid.

Argument of Fifth Question

If the redemption provisions requiring the payment of the deferred interest coupons, in whole or in part, are invalid, they are not severable from the other redemption provisions in the outstanding bonds, and the latter cannot be called for redemption in advance of their maturity.

The provisions concerning the manner in which the outstanding bonds may be called for redemption, are entire and indivisible. To call them for redemption on or before January 1, 1944, three things must be done: 1) the prin-

cipal must be paid; 2) accrued interest to the redemption date must be paid; 3) one-half of the deferred interest must be paid. The performance of each of these conditions is dependent on the performance of the other two. It is certain that the parties to the contract evidenced by the outstanding bonds, did not intend that the third condition should be breached at the time of performance of the first and second.

As previously pointed out, the position of the State is that the provisions for the payment of the deferred interest are valid. However, if they are invalid, they nevertheless constitute an integral part of the provisions for calling the outstanding bonds for redemption—that is, they constitute one of three conditions subsequent which must be performed to bring about a valid call for redemption. If any one of the three conditions subsequent is invalid, the other two must fall with it, thereby invalidating all of the provisions purporting to authorize the calling for redemption of the outstanding bonds. In this situation, there is no method or means whereby they may be called for redemption in advance of their maturity.

It follows that if the provisions for the payment of the deferred interest, in whole or in part, are invalid, the outstanding bonds have not been and cannot be validly called for redemption, and therefore that the issuance of the proposed refunding bonds for the purpose of calling the outstanding bonds, is unauthorized and illegal."

APPENDIX B

"Argument of Fourth Question

The validity of the deferred interest coupons appurtenant to the bonds proposed to be refunded.

Argument of this question is unnecessary. I feel confident that this Court will follow its most recent decisions on this point, namely:

Outman vs. *Cone,* 141 Fla. 196, 192 So. 611
Taylor vs. *Williams,* 142 Fla. 402, 195 So. 175
State vs. *Special Tax School District No. 3,* 143 Fla. 557, 197 So. 127.
Andrews vs. *City of Winter Haven,* (Fla.) Opinion Filed September 13, 1941, not yet reported

Argument of Fifth Question

The provisions for the payment of the deferred interest coupons, in whole or in part, are severable from the other redemption provisions in the outstanding bonds, and the latter can be called for redemption in advance of their maturity.

This point was directly presented and expressly decided by this Court in *Andrews* vs. *City of Winter Haven,* supra. It was there held that similar deferred interest coupons were unauthorized and void, but that the provisions for their payment, either in whole or in part, were severable from the other provisions for the calling of the outstanding bonds for redemption, and when severed from such other provisions, that the outstanding bonds were callable for redemption, at par plus accrued unpaid interest to the date fixed for redemption, as if the deferred interest coupons had never been annexed thereto.

In the instant case, the resolution authorizing the issuance of the proposed refunding bonds is directly founded on,

and strictly adheres, in all respects, to the procedure approved in the cited case. The latter is full and complete authority by this Court for calling the outstanding bonds for redemption on January 1, 1942, at par plus accrued unpaid interest to that date, and establishes, beyond all shadow of doubt, that the City has validly called the outstanding bonds for redemption on January 1, 1942."

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ADDITIONAL STATEMENT

The opinion filed here November 8, 1943 (**Meredith v. Winter Haven,** No. 42, ... U. S. ....., 64 S. Ct. 7), evidences a comprehensive grasp of the case presented and of the contentions made. No elaborate re-statement appears necessary.

However, certain basic facts should be kept constantly in mind:

1. The 1933 refunding bonds were issued to refund 30 separate issues of outstanding bonds.

2. The old bonds were payable at definite dates and were non-callable .

3. Most of them were unmatured and many of them would not yet have matured.

4. The City was unable to pay the principal and interest on the old bonds as it matured.

5. The creditors were somehow induced to exchange their outstanding bonds for the 1933 refunding bonds.

6. The 1933 refunding bonds did not increase either the principal or the rate of interest.

7. Since the City could not pay the outstanding obligations as they were maturing, it was provided that only a portion of the interest on the refunding bonds for the first ten years after their issuance should be currently payable and should be evidenced by semi-annually maturing coupons, such currently maturing coupon interest being payable according to the following schedule:

3½	per cent from April 1, 1933 to April 1, 1935—	2 years
4	per cent from April 1, 1935 to April 1, 1936—	1 year
4½	per cent from April 1, 1936 to April 1, 1937—	1 year
5	per cent from April 1, 1937 to April 1, 1943—	6 years
		10 years

8. Payment of the differential between the amount of interest called for by the old bonds and the currently maturing coupon rate on the new bonds for this first 10-year period was deferred until the maturity of the refunding bonds and for convenience it was referred to in the bond contract papers as deferred interest.

9. The refunding bonds mature serially, April 1, 1948 to April 1, 1963. It is thus seen that the earliest maturing bonds do not become due until long after the original rate of interest comes into effect as a current obligation of the bonds.

10. Since the refunding bonds were made callable, it was provided that if they should be called before maturity the bond holder would not lose all of the deferred interest but should recoup a portion of it, that is:

(a) If the bonds were called during the 10-year period during which the reduced currently maturing coupon rate was in effect, 1933 to 1943, the bondholder would be paid the full principal of the bonds, accrued interest at the currently maturing coupon rate, and one half of the deferred interest for the 10-year period in which the low currently maturing coupon rate was in effect;

(b) If the bonds were called during the second 10-year period, 1943 to 1953, the bondholder was to be paid the full principal of the bonds, accrued interest at the currently maturing coupon rate, and three-fourths of the deferred interest for the 10-year period.

(c) If the bonds were called during the third 10-year period, 1953 to 1963, the bondholder was to be paid the full principal of the bonds, accrued interest at the currently maturing coupon rate, and the full deferred interest for the 10-year period.

11. Section 20 of the resolution of the City Commission authorizing the 1933 refunding bonds provides:

> "That if any clause, section, paragraph or provision of this resolution or of the General Refunding Bonds hereby authorized be declared unenforcible by any Court of final jurisdiction, it shall not affect or invalidate any remainder thereof, and if any of the bonds hereby authorized be adjudged illegal or unenforcible in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded and as such enforce their claim for payment."

12. The refunding bonds held by the respondents are listed by number, amount and maturity date, at page 94 of the Record. By checking these numbers against the schedule of exchanges set out in Section 17 of the resolution authorizing the refunding bonds, at page 82 of the Record, it is a simple matter to identify the maturity dates of the bonds surrendered in exchange for them, and to determine the amount the respondents would be entitled to be paid, under Section 20 of the resolution, on call of their bonds, if the deferred interest provisions of the refunding bonds be held illegal or unenforcible.

13. The 1933 refunding bonds were validated in the Courts of Florida, in statutory bond validation proceedings, at the instigation of the City, under statutes providing that the validation decrees are forever conclusive and that thereafter the validity of the bonds shall never be brought in question in any court.

14. The City attempted to call the 1933 refunding bonds, for redemption on October 1, 1941, without providing for the payment of any part of the deferred interest, it being stated in the notice that "no interest will be paid on said bonds after the redemption date."

15. The present respondents (plaintiffs in the District Court) filed a Complaint, which was later amended, seeking a declaratory judgment as to the amount the City would have to pay, upon calling the bonds in advance of their maturity, with appropriate injunctive relief.

Petitioners assert that none of the issues raised by the Complaint and by the Amendment to the Complaint were decided by the Circuit Court of Appeals. But that position is untenable, as will readily be seen by comparing the allegations and prayers of the Complaint and Amendment with the opinion of the Circuit Court of Appeals, **Meredith v. Winter Haven, 141 Fed. (2nd) 348, 141 Fed. (2nd) 1019.** It is clear that the real matter in controversy, as to which a declaratory judgment is sought, is how much the City of Winter Haven owes its bondholders upon calling their bonds before maturity. And that is the question decided by the Circuit Court of Appeals.

ARGUMENT

The petition does not show that the decision of the Circuit Court of Appeals is in conflict with applicable local decisions, or that there is any other special or important reason for granting a review.

I.

It is first contended by petitioners that the Circuit Court of Appeals did not decide whether the City's attempt to call the bonds, upon paying only the principal, plus the currently maturing coupon interest, without paying deferred interest as called for in the bond contract, was valid, or, as petitioners state it, "whether the call for redemption of the bonds was valid under the law of Florida."

We fail to see how anyone can read the opinion prepared for the Court by Judge Sibley, and concurred in by all the judges participating, and remain in any doubt whatever that the attempted call was held invalid.

The opinion contains a careful analysis of the Florida decisions bearing upon the question and evidences a genuine effort to decide the point as the Supreme Court of Florida would have decided it.

That the Circuit Court of Appeals reached the same conclusion that the Florida Supreme Court would have reached is indicated by the decision of the latter court in the recent case of **State v. City of Lakeland, ... Fla. ....., 16 So. (2nd) 924.**

The old bonds of the City of Lakeland bore interest at rates varying from 5 per cent to 6 per cent.

The refunding bonds were to be dated July 1, 1943, and bear interest at 3 per cent per annum for the first year, 4 per cent per annum for the next four years, and 3 per cent per annum thereafter.

The refunding bonds maturing July 1, 1960 and thereafter were made callable July 1, 1959 and thereafter, at par and accrued interest, plus an additional one year's interest of 2½ per cent, if redeemed on July 1, 1959, with the additional interest being reduced at the rate of ¼ of 1 per cent per annum in 1960 and succeeding years until the year 1969 is reached. Refunding bonds remaining outstanding in 1969 may be redeemed in 1969 and thereafter, without the payment of additional interest.

The opinion states:

> "We are unable to say that the inclusion of such a provision, as a part of a comprehensive plan for the retirement of the indebtedness and at considerable interest savings to the taxpayers, requires the approval of the freeholder electorate before it may be adopted."

Judge Sibley was careful to point out that the provision for redemption of the Winter Haven refunding bonds was likewise part of a comprehensive plan for the retirement of the indebtedness, that "the new bonds eased the pressure **without increasing the principal or** the rate of **interest",*** that "the call provisions were for the benefit of the City, as the Florida Court declares it will judicially notice," and that

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* **Emphasis has been supplied in some of the quotations in this brief.**

"even after paying the consideration" for the right to redeem "there is profit in the present call."

The petitioners seem to be contending that, merely because the Circuit Court of Appeals found "no settled constitutional law in Florida which would condemn these bonds as refunding bonds, or which would invalidate the postponement of payment of part of the old interest rate by the plan of deferred coupon," the Circuit Court of Appeals was itself bound to condemn them, so far as the provision for payment of deferred interest on call is concerned, and thus to invalidate the postponement of payment of part of the old interest rate.

They also seek to throw doubt upon the soundness of the decision of the Circuit Court of Appeals, because of the fact that the opinion states that "we do not see how" the provision for payment of part of the deferred interest upon call of the bonds can be severed from the call provision "so as to sustain the call before maturity without paying part of the deferred interest," and that "we are not sure that the **Andrews case** * requires us to hold otherwise."

Certainly the Court was not sure that the **Andrews case** so requried, for it was a "made case" and "the parties were co-operating to secure a decision in the City's favor," and "it is much weakened as authority, because the cause of complaint presented there differs much from that in this case. Andrews sued on a contract of the City with himself and others as refunding agents to bring about the refunding, which was made several months before the refunding resolution of July 24, 1933, involved here as a part of the present bondholders' contract. Andrews did not bring that resolution into his case at all. * * * Andrews contributed to his defeat by resting his case on this agency contract. In the case before us we know of the agency contract only through the **Andrews case,** and it appears to be separate from the refunding resolution. If invalid, it ought not to affect these bonds. If this expense was in some way taken out of bond money, it possibly ought to be restored, but this does not appear."

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* Andrews v. Winter Haven, 148 Fla. 144, 3 So. (2nd) 805.

Since the **Andrews case** did not deal with the refunding resolution at all, and since the petitioners were unable to cite any Florida decisions throwing doubt upon the validity of the provisions of Section 20 of the resolution, the Circuit Court of Appeals was correct in deciding that

> "If the **Andrews case** requires us to hold that the part of the call provision which requires one-half the deferred interest to be paid is separable and unenforceable, then the bonds are 'adjudged illegal and unenforceable * * * in part,' and the holders are 'entitled to assume the position of holders of a like amount of the indebtedness provided to be refunded and as such enforce their claim for payment'."

There can be no basis for the professed apprehension of the petitioners that the District Court will be in doubt as to what has been decided, for the opinion plainly states that this "will sustain a claim not exceeding the amount that would be due on an old bond at its rate of interest up to the date of call, less interest payments made," and that while "the interest due on an old bond would be more than is here claimed, because under the new bonds only one-half the deferred interest is payable, and nearly all would have been earned in October, 1941," "the claim ought not to be enlarged."

II.

The petitioners next observe that the Circuit Court of Appeals found "no settled constitutional law in Florida" that would permit the City to call the bonds on or before April 1, 1943, without paying any portion of the deferred interest.

The opinion states that, aside from the **Andrews case,** which the Court pointed out did not involve the refunding bonds, or the resolution authorizing them, but only the contract between the City and its refunding agents, "we find no settled constitutional law in Florida **which would condemn these bonds as not being refunding bonds, or which would invalidate the postponement of payment of part of the old interest rate by the plan of deferred interest coupons,** because on the whole the time of payment of principal and interest has merely been enlarged **without increasing the burden of the debt."**

The Court was not sure that the **Andrews case** controls this one, for the reasons stated in the opinion, but decided that, if the **Andrews case** requires a holding that the part of the call provision which requires one-half the deferred interest to be paid is separable and unenforceable, then the bonds are "adjudged illegal and unenforceable * * * in part", and the holders are "entitled to assume the position of holders of a like amount of the indebtedness provided to be refunded and as such enforce their claim for payment."

Petitioners have cited no Florida case, and we believe none can be found, which indicates that the decision so reached is contrary to Florida law or is other than what the Florida court would have announced if the question had been presented to it.

In **Jefferson County v. Hawkins, Trustee, 23 Fla. 223, 2 So. 362,** the Supreme Court of Florida considered a case where the County had issued certain bonds, referred to for convenience as "blue bonds." Later, the County without legislative authorization issued refunding bonds, in lieu of the "blue bonds," for the principal of the bonds and for the matured interest. The new or refunding bonds were referred to as "white bonds." The Court held that the "white bonds" were void, but that when the County took up the "blue bonds" with the "white bonds," **that did not extinguish the debt, but the debt remained until paid.** It was further held that **the County was obligated to pay interest on the principal of the "blue bonds" at the contract rate,** and to pay interest on the matured "blue bond" interest coupons, from their maturity, at the legal rate of interest.

In the case of **State ex rel. Gillespie v. Walthal, 124 Fla. 866, 169 So. 552,** decided July 21, 1936, the Florida Supreme Court, speaking of the identical issue of Winter Haven 1933 refunding bonds involved in the instant case, emphasized the fact that, on the strength of the validation decree, **procured by the City,** the original bonds had been exchanged for the refunding bonds and surrendered to the City, and the Supreme Court of Florida held that the refunding bonds "therefore **were**, at least **valid extensions** pro tanto of the original obligations."

III.

Petitioners assert that the decision is in conflict with the holdings in **Outman v. Cone, 141 Fla. 196, 192 So. 611, Taylor v. Williams, 142 Fla. 402, 195 So. 175, State v. Special Tax School Dist. No. 3 of Pinellas County, 143 Fla. 557, 197 So. 127,** and **State v. City of New Smyrna Beach, 148 Fla. 482, 4 So. (2nd) 660,** as well as the ruling in **Andrews v. Winter Haven.**

This position seems to be rendered untenable by the fact that in none of those cases did the Court consider such a provision as that contained in Section 20 of the Winter Haven resolution.

The case of **Outman v. Cone, 141 Fla. 196, 192 So. 611,** involved the right to call bonds under a provision authorizing their call, at that particular time, without payment of any "deferred interest," if the money made available to pay the bonds was obtained from sources other than the sale of new refunding bonds. If, however, the money to call the bonds was raised by selling new refunding bonds, a portion of the deferred interest was to be paid.* The Court stated that it was "apprised of no good reason for the difference" in amounts to be paid, depending on the source of payment.

The Court either **found** or **assumed** the fact to be that payment of the deferred interest as provided in the bonds and authorizing resolution, when added to the expense of refunding, would make the bonds more burdensome than the original bonds, and, therefore, in conflict with **Article IX, Section 6,** of the **Florida Constitution.**

In the case of Taylor v. Williams, 142 Fla. 402, 195 So. 175, the Florida Court again either **found** or **assumed** the fact to be that the provisions of the bonds under consideration would increase the burden of the taxpayers, in violation of **Article IX, Section 6.**

But, as pointed out in the opinion of the Circuit Court of Appeals, the Winter Haven refunding bonds "eased the pressure **without increasing the principal or the rate of interest,**" and "**there is profit** (to the City) **in the present call.**"

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* **Such ambiguous provision is not contained in the bonds involved in this case.**

The case of **State v. Special Tax School Dist. No. 3 of Pinellas County, 143 Fla. 557, 197 So. 127,** was decided June 28, 1940. It was a proceeding to validate a new issue of refunding bonds. The opinion points out that the bonds proposed to be refunded provide that they may be called "on or prior to October 1, 1942, at par and accrued interest at the rate then prevailing as enforcible and collectible" (apparently without payment of deferred interest), that they are being called under this provision, and that there is no occasion for enforcing the deferred interest coupons **if the outstanding bonds are called prior to October 1, 1942.**

It was therefore quite proper for the Circuit Court of Appeals, in denying the petition for rehearing in the **Winter Haven case**, to observe that in the **Pinellas County case,** the court held that the deferred interest coupons would not thereafter be collectible, "but the reason given is not that they were originally and totally void, but that the bonds which bore them had been duly called under a provision for calling them 'at par and the accrued interest at the rate then prevailing as enforcible and collectible'."

The case of **State v. City of New Smyrna Beach, 148 Fla. 482, 4 So. (2nd) 660,** was a statutory proceeding to validate a proposed new issue of refunding bonds. Just how it could possibly adjudicate anything as to the obligation of the City to pay deferred interest on an old issue of refunding bonds that were already outstanding is difficult to understand. It was expressly held in **State v. Hillsborough County, 113 Fla. 345, 151 So. 712,** that such questions cannot be decided in a proceeding to which the holders of the outstanding bonds are not parties. At any rate, the Florida Court, in the **New Smyrna Beach case,** did not say anything which purported to extend the **principles of law** recognized and defined in the **Outman and Taylor cases.**

The latest Florida decision dealing with a provision for payment of interest upon call of refunding bonds, at a rate exceeding that which had accrued as enforcible and collectible, without approval of the freeholder electorate, was rendered in the case of **State v. City of Lakeland, ... Fla. ....., 16 So. (2nd) 924,** where the inclusion of such a provision, without freeholder approval, was sustained.

But, regardless of what decision might have been reached if Section 20 had not been included in the Winter Haven resolution, the fact remains that none of the cases relied upon by petitioners involved a situation such as is presented in Section 20, and there being no Florida decisions indicating that Section 20 was in anywise invalid, the Court of Appeals was entirely within its province in declaring it effective.

The Court was certainly correct in its statement that "in the case before us we know of the agency contract only through the **Andrews case**, and it appears to be separate from the refunding resolution" adopted several months later and "involved here as a part of the present bondholders' contract."

Exhibit E, which begins at page 109 of the Record, is simply a transcript of the proceedings in the **Andrews case,** and shows that that case was decided on the basis of the agency contract, attached as Exhibit "A" to the bill of complaint in the **Andrews case** (see transcript page 119), whereas the present case seeks a judgment decaratory of the rights of the bondholders whose securities were issued pursuant to the resolution adopted by the City Commission several months later, quite apart from any agreement which the City may have made with its refunding agents.

Since the resopndents here are not claiming under the agency contract, there seems to be no occasion for citing such cases as **McMullen v. Hoffman, 174 U.S. 639, 43 L. Ed. 1117,** and **Hall v. Coppell, 7 Wall. 542.**

Under Florida law, the respondents' bond contract is not affected, one way or the other, by any contracts the City may have made with its refunding agents.

State v. City of Fort Myers
145 Fla. 135, 198 So. 814.
State v. Sarasota County
118 Fla. 629, 159 So. 797.

CONCLUSION

The final contention of the petitioners seems to be that the decision of the Circuit Court of Appeals is erroneous because of the fact that the opinion states that the right held to exist on the part of the bondholders "is a contract right, and both just and equitable."

If this proceeding had been brought in the courts of Florida, the contract rights of the parties would have had to be decided there according to the principles of equity and justice, in the absence of a contrary provision in the constitution or statutes, and in the absence of a controlling judicial precedent requiring some other basis of decision.

Surely, the judgment is not to be overthrown because it comports with equity and justice, there being no state law requiring a contrary holding.

Respectfully submitted,

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